

REMARKS

Claims 1, 3-10 and 12-24 are pending.

Applicants hereinabove have amended the claims to reverse several previous amendments. Specifically, claims 1, 23, 3-10, 24, 12-18 are now essentially equivalent to claims 1-18, respectively in the May 18, 2007 Amendment. In addition, claims 19-22 are now essentially equivalent to claims 19-22 in the October 31, 2007 Amendment.

No new matter has been added by way of the above-amendment.

I. Entry of Amendment Request

Applicants note that this amendment simply reverts the claims to a state which was previously considered by the Examiner. As such, the consideration of this Amendment can be made without undue burden, and entry thereof is respectfully requested.

II. Issues under 35 U.S.C. § 103

The following rejections are pending:

- (A) Claims 1, 3, 4, 6-10, 12, 13 and 15-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over **Tabata et al.** (US 2002/0071980) in view of **Ueda et al.** (US 2004/0115515), and further in view of **Kohler et al.** (US 2003/0224223); and
- (B) Claims 5 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over **Tabata et al.** in view of **Ueda et al.** and **Kohler et al.** as applied to claims 1 and 10 above, and further in view of **Dube et al.** (US 2004/0089357).

Applicants respectfully traverse Rejection (A) and Rejection (B).

The Examiner is relying on Ueda et al. for teaching a bilayer structure catalyst layer wherein each catalyst layer has a thickness of 2-50 microns. Applicants herein antedate Ueda et

al. by filing a verified English translation of the instant priority document. The present application claims priority to Application No. 2003-011587 which was filed in Japan on January 20, 2003. Ueda et al. is available under 35 USC 102(e) as of the filing date of October 24, 2003.

This course of action is appropriate, since the presently claimed invention has written description support in Application No. 2003-011587 and the presently claimed invention is enabled by the disclosure of Application No. 2003-011587.

As such, Rejection (A) and Rejection (B) are rendered moot.

III. Current Form of Claims

As mentioned above, claims 1, 23, 3-10, 24, 12-18 are now essentially equivalent to claims 1-18, respectively in the May 18, 2007 Amendment. Applicants have reverted the claims back to the state they were in prior to the July 6, 2007 Office Action, wherein the Examiner first cited **Ueda et al.** (US 2004/0115515).

In view of the above-comments and the enclosed verified English translation of the instant priority document, Applicants believe the pending application is in condition for allowance.

Conclusion

In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


Application No. 10/761,128
Amendment dated December 19, 2008
After Office Action of July 8, 2008

Docket No.: 5271-0111PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: December 19, 2008

Respectfully submitted,

By  #83575
John W. Bailey
Registration No.: 32,881 *for*
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Attached: Verified English translation of the instant priority document, Application No. 2003-011587